IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2694 OF 1992

Bank of Maharashtra. ... Plaintiffs.

V/s.

M/s. Aashka Chemicals Pvt. Ltd. & Ors. ... Defendants.

Mrs. A.S. Risbud for the Plaintiff.
Ms. Payal Gandhi i/b. M/s. Shah & Sanghavi for the Defendants.

CORAM : DR. D.Y. CHANDRACHUD,J.

01ST AUGUST 2007.

P.C. :-

. The suit has been instituted for the recovery of an amount of Rs.1,88,789.75 together with interest. The claim of the Bank is for the recovery of monies lent and advanced. The Defendants have admittedly been served with the writ of summons which was issued on 15th September 1992. On behalf of the Defendants, an oral request has been made upon the suit being called out for hearing for want of written statement that the Defendants may be permitted to file their written statement. 15 years have lapsed since the institution of the suit and the service of the writ of summons. Even at this stage, neither is a written statement ready nor has any written application been taken out

before the Court justifying the delay The oral request made on behalf of the Defendants shall accordingly have to be declined and is accordingly declined.

2. In support of the claim in the suit, the Plaintiffs have relied upon the affidavit in lieu of examination in chief of their witness Shri Sanjay K. Sawal, who is working as a Branch Manager at the Girgaon Branch, Mumbai. A compilation of the original documents has been tendered and taken on the record.

3. On 22nd July 1989 the Defendants requested the Plaintiffs to grant to the First Defendant a cash credit facility against hypothecation of goods and book debts with a limit of Rs.5 lakhs. In consideration of the Plaintiffs granting a cash credit facility in the amount of Rs.3 lakhs, the First Defendant which is a Company incorporated under the Companies Act, 1956, the Second Defendant, who is the Director of the Company and the two other Directors executed certain documents on 22nd July 1989. A Joint Demand Promissory Note in the amount of Rs.3 lakhs was executed in favour of the Plaintiff under which the outstanding would carry interest as stated therein. A Promissory Note was

executed by the Second Defendant in his personal capacity also. A deed of hypothecation of goods and book debts was executed for and on behalf of the First Defendant. The Second Defendant executed a deed of guarantee dated 10th February 1990 in the amount of Rs.3 lakhs.

4. The Defendants have failed to pay the dues despite an Advocate's letter which was addressed on behalf of the Plaintiff on 19th November 1990. Finally, a notice of demand was addressed on 3rd June 1992. The Plaintiffs have maintained accounts in the usual and ordinary course of business. A Certified copy thereof has been placed on the record.

5. There has been no cross examination of the witness for the Plaintiffs.

6. The suit shall accordingly have to be decreed. There shall be a decree in terms of prayer clause (a) with the modification that the Plaintiffs would be entitled to interest at the rate of 12% per annum on the principal sum of Rs.3 lakhs from the date of the institution of the suit until payment or realisation.